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CURRENT NOTE

AN ARBITRATION WITH NORWAY

A return to normalcy in the international world means a return to the judicial settlement of international disputes. Many events since the war testify to the fact that the trend of the times is in this direction, and it has been gratifying to observe that the United States, true to tradition, has been no disinterested bystander in the work of re-establishing the machinery of international law. It is quite proper that we should note with pride that the first president elected since the war to preside over an international tribunal constituted under the Hague Conventions was Mr. Elihu Root,¹ and especially that the plan for the Permanent Court of International Justice finally adopted by the League of Nations was very largely the work of this same distinguished American. But in rendering such services Mr. Root has been acting in a purely personal capacity, and while reflecting undoubted credit upon our country it is nevertheless a fact that his acts have not borne the stamp of official government sanction. Meanwhile abroad, and not a little at home, America's rejection of the League of Nations' Covenant has been the source of a certain scepticism or misunderstanding over the real position of America toward the world problem of reconciliation. To such criticisms our most valid appeal must be to the facts, and under this test events are again occurring which should convey to the world the assurance that the United States, both by word and in action, continues to look to the way of international arbitration as affording the surest road toward international understanding. Highly significant in this connection has been the recent reopening of the sessions of the British-American Claims Commission which, in pursuance of the treaty with Great Britain of August 18, 1910, had only commenced its work when the war suddenly interrupted its activities. And to this there may now be added an act carrying with it an even broader significance. An agreement between the United States and Norway² was signed on June 30, 1921, ratifications being exchanged at Washington on August 22, 1921, whereby the two countries have agreed to arbitrate certain important claims arising from the war.

According to the preamble to this agreement with Norway the purpose of the arbitration is "to settle amicably certain claims of Norwegian

¹Case of the Expropriated Religious Properties in Portugal, Awards of Sept. 2-4, 1920.

²The treaty will be found printed in the Supplement to this JOURNAL, p. 16.

subjects against the United States arising, according to contentions of the Government of Norway, out of certain requisitions by the United States Shipping Board Emergency Fleet Corporation." The outstanding facts in the case may be briefly summarized; in a general way they are largely familiar to the public, in view of the many similar claims on the part of American citizens which have been referred to the Shipping Board and which are also being prosecuted before the Court of Claims. On August 3, 1917, the Shipping Board, pursuant to powers delegated under Act of Congress approved June 15, 1917, issued sweeping requisition orders to all shipbuilding yards of the country commandeering in the name of the Government all ships under construction having a capacity of over 2500 tons deadweight, and all materials pertaining thereto. American shipbuilders at that time were engaged in building many ships for foreign account, and the Norwegian claims which are the subject of the present arbitration grow out of contracts for the construction of fifteen ships, which by virtue of various assignments, some before and some after August 3, the date of the Government requisition, came eventually into the hands of Norwegian subjects. Nine of the fifteen vessels concerned were to be built in the yards of American companies whose stock was principally, if not entirely, owned by a Norwegian subject largely interested at the time in promoting shipbuilding construction in the United States, and these vessels were originally contracted for by other American companies which were also controlled by the same Norwegian subject. When the requisition became effective the keels of only two of these fifteen contracted ships had actually been laid in the yards, and a portion of the material delivered on one other. The Government took possession of the ships under construction, as well as of all material delivered on the contracts, and, the shipyards being henceforth held exclusively to government work by virtue of the war necessities of the United States, it became impossible for them to execute the contracts in which the Norwegian subjects were concerned.

The Act of June 15, 1917 had provided that the United States should pay "just compensation" in return for the requisitions made in pursuance thereof, and the Shipping Board became charged with the settlement of such claims. The Board was generally successful in concluding settlements but the case of the "Christiania Group of Norwegian Ship Owners" (the fifteen claimants in the present arbitration had combined under this title) proved an exception. This group sought to recover before the Board a total sum of \$14,157,977.58, allegedly calculated upon the basis of original cost to the ultimate contract owners, plus additional expenses, plus interest. Such a method of calculation was entirely unacceptable to the Shipping Board. \$2,381,635.00 had been paid to the builders as progress payments on these contracts, and, of course, to this sum a just claim might be established, but on the other hand the actual

material in the yards represented by these contracts (two ships under construction and part material delivered on one additional), and which was the only property acquired by the United States under the requisition, was estimated to be worth only \$623,760.00. The amount claimed by the Norwegians stood at best for the highly speculative value that shipping contracts had obtained on the open market due to the shipping crisis prevailing under the pressure of the submarine warfare. The Norwegian claimants assert that they bought these contracts at great increases in price, and they contend that these high rates were justified under the abnormal circumstances.

Direct negotiations with the Shipping Board having proved fruitless, the matter was taken up diplomatically through the Norwegian Minister at Washington and the outcome was the decision to submit the claims to arbitration. The treaty provides for an Arbitral Tribunal to be constituted very much as prescribed by the Hague Convention of 1907 in the case of Summary Procedure. Each Government appoints one arbitrator and the third who is to preside over the Tribunal will be named by the President of the Swiss Confederation,—the two countries not having mutually come to a decision upon the third member when the first month elapsed as allowed by the treaty. The American and Norwegian members have already been announced. Mr. Chandler P. Anderson, well known to international law circles for his many previous services in international arbitrations, and particularly as Agent for the United States in the North Atlantic Coast Fisheries Arbitration at The Hague in 1910, as Counsel for the Government of Costa Rica in the Panama-Costa Rica Boundary Arbitration before Chief Justice White in 1913-14, and most recently as Arbitrator on the British-American Pecuniary Claims Arbitration Commission, has been named by the United States. Norway has likewise chosen an eminent representative of her country in the person of His Excellency Paul Benjamin Vogt, the present Ambassador of that country at the Court of St. James.

To act as Agent the United States has named Mr. William C. Dennis of Washington, formerly Assistant Solicitor of the Department of State, Agent of the United States in the Orinoco Steamship Company Arbitration at The Hague in 1910, and in the Chamizal Arbitration with Mexico at El Paso, Texas, in 1911. Mr. Dennis' latest public services in international law have been as Legal Adviser to the Chinese Government at Peking during the war, and as Solicitor to the American Delegation to the Preliminary Conference on International Communications held in Washington in the fall of 1920. The Norwegian Agent is Captain C. Frolich Hanssen, a distinguished artillery officer of the Royal Norwegian Army, and a practical expert both in the construction and operation of ships. Through long association in America with the shipping interests of the Norwegian claimants, and having represented these claimants before the

United States Shipping Board in 1919, and having served as a member of the Norwegian Technical Commission which participated in the negotiation of the Special Agreement of June 30, 1921, Captain Hanssen possesses an intimate knowledge of the matters involved in the arbitration.

According to the treaty the Tribunal would meet at The Hague June 22nd next, but by mutual agreement a postponement of one month has been adopted, thus fixing the opening date as July 22, 1922.

It is undoubted that an arbitration of such importance is destined to occasion much interest and publicity. The amount of money involved is enough to assure this. But apart from the pecuniary interests at stake there are several important legal questions awaiting decision which are likely to establish significant precedents in international law. This will be the first important arbitration to have direct bearing upon the war. By the treaty the Tribunal is to reach its decision "in accordance with the principles of law and equity." War was the cause, but normalcy returns again to appeal in the name of "law and equity."

STANLEY P. SMITH.